



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2010

Ms. Elizabeth J. Ossenfort
Assistant General Counsel
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2010-10408

Dear Ms. Ossenfort:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 386402 (TWC Tracking Number 100426-028).

The Texas Workforce Commission (the "commission") received a request for the requestor's closed complaint file. You state a portion of the requested information has been or will be released to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.136, 552.137, and 552.147 of the Government Code.¹ In addition, you state that the release of some of the requested information may implicate the proprietary interests of State Farm Insurance Company ("State Farm"). Accordingly, you have notified State Farm of the request and of its opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received comments from State Farm stating that it does not object to the release of the requested information in this instance. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge that the commission failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(e). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the

¹We note that although you raise section 552.305 of the Government Code, this section is not an exception to disclosure under the Act; rather, it is a procedural provision permitting a governmental body to decline to release information that may implicate a person's privacy or property interests for the purpose of requesting a decision from this office as provided under the Act. *See* Gov't Code § 552.305; Open Records Decision No. 542 (1990).

information is public and must be released. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.--Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Because the exceptions you raise can provide compelling reasons to withhold information, we will consider the applicability of those sections to the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision[.]" Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Pursuant to section 21.204 of the Labor Code, the commission may investigate a complaint of an unlawful employment practice. *See* Labor Code § 21.204; *see also id.* §§ 21.0015 (powers of Commission on Human Rights under Labor Code chapter 21 transferred to commission's civil rights division); 21.201. Section 21.304 of the Labor Code provides that "[a]n officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except as necessary to the conduct of a proceeding under this chapter." *Id.* § 21.304.

The information at issue pertains to a complaint of unlawful employment discrimination that was investigated by the commission under section 21.204 and on behalf of the Equal Employment Opportunity Commission. Thus, the information at issue is confidential under section 21.304 of the Labor Code. However, in this instance, the requestor is a party to the complaint. Section 21.305 of the Labor Code addresses the release of commission records to a party to a complaint filed under section 21.201 of the Labor Code and provides as follows:

(a) The commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint.

(b) Unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records:

(1) after the final action of the commission; or

(2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law.

Id. § 21.305. In this case, the commission has taken final action; therefore, section 21.305 is applicable.

At section 819.92 of title 40 of the Texas Administrative Code, the commission has adopted rules that govern access to its records by a party to a complaint. Section 819.92 provides as follows:

(a) Pursuant to Texas Labor Code § 21.304 and § 21.305, [the commission] shall, on written request of a party to a perfected complaint under Texas Labor Code § 21.201, allow the party access to [the commission's] records, unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement:

(1) following the final action of [the commission]; or

(2) if a party to the perfected complaint or the party's attorney certifies in writing that a civil action relating to the perfected complaint is pending in federal court alleging a violation of federal law.

(b) Pursuant to the authority granted the [c]ommission in Texas Labor Code § 21.305, reasonable access shall not include access to the following:

(1) information excepted from required disclosure under Texas Government Code, chapter 552; or

(2) investigator notes.

40 T.A.C. § 819.92. A governmental body must have statutory authority to promulgate a rule. *See Railroad Comm'n v. ARCO Oil*, 876 S.W.2d 473 (Tex. App.—Austin 1994, writ denied). A governmental body has no authority to adopt a rule that is inconsistent with existing state law. *Id.*; *see also Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 750 (Tex. 1995); Attorney General Opinion GA-497 (2006) (in deciding whether governmental body has exceeded its rulemaking powers, determinative factor is whether provisions of rule are in harmony with general objectives of statute at issue).

As noted above, section 21.305 of the Labor Code requires the release of commission complaint records to a party to a complaint under certain circumstances. *See* Labor Code § 21.305. The commission's rule in subsection 819.92(b) operates as a denial of access to complaint information provided by subsection 819.92(a). *See* 40 T.A.C. § 819.92. The rule conflicts with the mandated party access provided by section 21.305 of the Labor Code. The commission submits no arguments or explanation to resolve this conflict. Being unable to resolve this conflict, we cannot find that rule 819.92(b) operates in harmony with the general objectives of section 21.305 of the Labor Code. Thus, we must make our determination under section 21.305 of the Labor Code. *See Edgewood*, 917 S.W.2d at 750.

In this case, final agency action has been taken. State Farm informs us that the requestor's complaint resulted in the issuance of a "Dismissal and Right to File Civil Action" notice to

the requestor. Thus, pursuant to sections 21.305 and 819.92(a), the requestor has a right of access to the commission's records relating to the complaint.²

You assert the submitted information is excepted under sections 552.101 in conjunction with common-law and constitutional privacy, 552.136, 552.137, and 552.147 of the Government Code. However, these sections are general exceptions to disclosure under the Act. A specific statutory right of access prevails over the common law and general exceptions to disclosure under the Act. *See Gallagher Headquarters Ranch Dev., Ltd. v. City of San Antonio*, 269 S.W.3d 628, 637 (Tex. App.—San Antonio 2008, pet. filed) (when statute directly conflicts with common law principle or claim, statutory provision controls and preempts common law; legislature may enact legislation that preempts or supersedes common law principle); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Because the requestor, in this instance, has a statutory right of access to the requested information, the commission may not withhold the information you have marked under section 552.101 in conjunction with constitutional privacy or common-law privacy, section 552.136, section 552.137, or section 552.147.

Next, we address your contention a portion of the submitted information is excepted from disclosure under section 552.130 of the Government Code, which excepts from disclosure information relating to a Texas driver's license. Gov't Code § 552.130(1). Although we agree the submitted information contains Texas driver's license numbers that are generally excepted from disclosure under section 552.130, we again note in this instance the requestor has a statutory right of access to the requested information.

A specific statutory right of access prevails over general exceptions to disclosure under the Act. Open Records Decision 451 at 4 (1986). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Accordingly, we must address the conflict between the access provided under section 21.305 of the Labor Code and the confidentiality provided under section 552.130. As stated above, where information falls within both a general and a specific provision, the specific provision typically prevails as an exception to the general provision. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, section 21.305 generally applies to any type of record contained in commission complaint records. Section 552.130 specifically protects Texas motor vehicle record information. Thus, we conclude section 552.130 is more specific than the general right of access provided under section 21.305 of the Labor Code. We therefore conclude, notwithstanding section 21.305, the commission must withhold the

²The requestor has a special right of access to the submitted information. If the commission receives another request for this particular information from a different requestor, then the commission should again seek a decision from this office.

Texas driver's license numbers you have marked under section 552.130 of the Government Code.

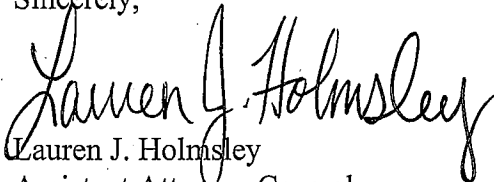
Finally, we agree that the information in Exhibit F is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the commission must withhold the Texas driver's license numbers you have marked under section 552.130 of the Government Code. The remaining information must be released to this requestor in accordance with applicable copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 386402

Enc. Submitted documents

c: Requestor
(w/o enclosures)